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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO.       |
|---|-------------|----------------------|---------------------------------|------------------------|
| 10/634,438  | 08/05/2003  | Richard Ben Errera   | 250311ErreraEnhRoller           | 8284                   |
| 4988  | 7590        | 03/03/2008           |                                 |                        |
| ALFRED M. WALKER<br>225 OLD COUNTRY ROAD<br>MELVILLE, NY 11747-2712 |             |                      | EXAMINER<br>ALEXANDER, REGINALD |                        |
|   |             |                      | ART UNIT<br>3742                | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>03/03/2008         | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |  |  |  |
|------------------------------|--|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/634,438     | <b>Applicant(s)</b><br>ERRERA, RICHARD BEN |  |
|                              | <b>Examiner</b><br>Reginald L. Alexander | <b>Art Unit</b><br>3742                    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7, 9-13, 15-17, 19-23 and 25-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-27 is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 9-13, 15-17, 19-23 and 28-33 is/are rejected.
- 7) ☒ Claim(s) 34-36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 9-13, 15, 17 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swapp in view of Oh.

There is disclosed in Swapp an embossing roller comprising: a cover/handle assembly 7, 9, 65 with multiple hand placement possibilities, the cover/handle further comprising an attachment 8 for an embossing wheel, the embossing wheel comprising a cylinder 2, the cover/handle member draping over the embossing wheel (when so positioned by the user) and attaching to the embossing wheel at a center-rotating axis 55, 56 of the wheel, the embossing wheel comprising an embossing pattern 28, 29 oriented on a rolling surface of the wheel, the embossing pattern assembly able to be changed for different embossing patterns and is height adjustable, the cover/handle further comprises an attachment 33 for a coloring device 30, wherein the roller further comprises an orienting mark 61 that indicates a starting point of the embossing pattern.

Oh teaches that it is known in the art to have a cover/handle assembly wherein the cover encloses a top and portions of the sides of a printing wheel, and has a handle which extends in a direction parallel to a direction of movement of the wheel.

It would have been obvious to one skilled in the art to modify the cover/handle assembly of Swapp with that taught in Oh, so as to provide a more comfortable grip and contain any splashing of ink during use.

In regards to the use of the device with a food product, such is intended use and provides no structural limitations to the claims.

In regards to claim 22, the method at which the embossing pattern is placed upon the wheel is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Claims 7, 16 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swapp in view of Oh as applied to claims above, and further in view of Kuzyk.

Kuzyk discloses a cutting blade along with a roller device. It would have been obvious to one skilled in the art to provide the device of Swapp, as modified by Oh, with the cutting blade of Kuzyk, in order to cut the surface which is being embossed.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swapp in view of Kordic et al.

Swapp, as discussed above, discloses all of the claimed subject matter except a food product having a surface capable of being incused with a three dimensional pattern.

Kordic discloses a pizza dough 33 having a three dimensional pattern thereon and a device 10 for creating the pattern.

It would have been obvious to one skilled in the art to provide the device of Swapp with the food product (dough) disclosed in Kordic, for the purpose of having something to imprint images thereon.

Claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaul in view of Swapp.

Blaul discloses a roller assembly for imprinting a pattern on a food product (dough), the assembly including a wheel (roller) and embossing pattern oriented thereon, the pattern being able to be changed, and a dough.

Swapp, as discussed above, discloses all of the structural limitations of the roller assembly.

It would have been obvious to substitute the roller assembly of Blaul with that taught in Swapp, for the purpose of providing an alternative means for imprinting on the dough.

Claim 28 merely recites a food product along with elements of a device which can be used with the food product, there is nothing limiting in the claim which would require use of the device only with food products.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swapp in view of Oh and Kordic.

Oh teaches that it is known in the art to have a cover/handle assembly wherein the cover encloses a top and portions of the sides of a printing wheel, and has a handle which extends in a direction parallel to a direction of movement of the wheel.

It would have been obvious to one skilled in the art to modify the cover/handle assembly of Swapp with that taught in Oh, so as to provide a more comfortable grip and contain any splashing of ink during use.

Kordic discloses a pizza dough 33 having a three dimensional pattern thereon and a device 10 for creating the pattern.

It would have been obvious to one skilled in the art to provide the device of Swapp with the food product (dough) disclosed in Kordic, for the purpose of having something to imprint images thereon.

The use of an imprinting roller or equivalent device is known in various arts and with various surfaces.

#### ***Allowable Subject Matter***

Claims 25-27 are allowed.

Claims 34-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 18 January 2008 have been fully considered but they are not persuasive. Imprinting rollers are known to be used with various surfaces and for multiple purposes. The prior art cited emphasis the various uses of an imprinting roller. Applicants claimed structural limitations have been met by the prior art. Additionally, rejections have been made showing the use of rollers devices with food products.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3742

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Reginald L. Alexander/  
Primary Examiner, Art Unit 3742